

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

DANCO, INC.,

Plaintiff,

v.

FLUIDMASTER, INC.,

Defendant.

Civil Action No.: 5:16-CV-00073-JRG-CMC

[PLAINTIFF’S PROPOSED] CLAIM CONSTRUCTION CHART

In accordance with the Fifth Amended Agreed Docket Control Order [Docket Entry # 91] and P.R. 4-5(d) Plaintiff Danco, Inc. (“Danco”) hereby submits its proposal for the Joint Claim Construction Chart for asserted U.S. Patent Nos. 8,943,620 (“the ‘620 Patent”) and 9,181,687 (“the ‘687 Patent”). Danco offered to meet and confer with Defendant and provided a draft of this claim construction chart to Defendant on August 13, 2017, but the parties have not been able to meet and confer on a claim construction chart to be submitted jointly. Attached hereto as Exhibit A is a chart of the claim terms and phrases proposed for construction by Defendant Fluidmaster, Inc. and on which the parties agree. Attached hereto as Exhibit B is a chart of the claim terms and phrases proposed for construction by both parties and on which the parties disagree. Attached hereto as Exhibit C is a chart of the claim terms and phrases proposed for construction by Defendant Fluidmaster, Inc. and on which the parties disagree. Attached hereto as Exhibit D is a chart listing the complete language of disputed claims with disputed claim terms and phrases in bold type.

Respectfully submitted, this 14th day of August, 2017, by:

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EXHIBIT A – JOINT CLAIM CONSTRUCTION CHART

TERMS/PHRASES PROPOSED FOR CONSTRUCTION BY FLUIDMASTER UPON WHICH THE PARTIES AGREE

U.S. Patent No. 8,943,620				
<u>Claim term, phrase or clause</u>	<u>Claim(s)</u>	<u>Danco's Proposed Construction</u>	<u>Fluidmaster's Proposed Construction</u>	<u>Court's Construction</u>
“flush mechanism”	1, 2, 4, 11	[AGREED]	[AGREED]	Plain meaning.
“predefined flush capability”	1, 2	[AGREED]	[AGREED]	Plain meaning.
“between”	1, 21	[AGREED]	[AGREED]	Plain meaning.
“flush orifice”	1, 20, 21	[AGREED]	[AGREED]	Plain meaning.
“sealing member”	1, 21	[AGREED]	[AGREED]	Plain meaning.
“seat a sealing member”	1	[AGREED]	[AGREED]	Plain meaning.
“in contact with the flush orifice”	21	[AGREED]	[AGREED]	Plain meaning.

U.S. Patent No. 9,181,687				
<u>Claim term, phrase or clause</u>	<u>Claim(s)</u>	<u>Danco's Proposed Construction</u>	<u>Fluidmaster's Proposed Construction</u>	<u>Court's Construction</u>
“extending beyond the flange”	1	[AGREED]	[AGREED]	Plain meaning.
“flush valve opening”	1, 14	[AGREED]	[AGREED]	Plain meaning.
“sealing material”	1, 2, 3, 14, 15	[AGREED]	[AGREED]	Plain meaning.
“lip”	4, 14	[AGREED]	[AGREED]	Plain meaning.
“engage a lip”	4	[AGREED]	[AGREED]	Plain meaning.
“support legs”	4, 12, 14, 20	[AGREED]	[AGREED]	Plain meaning.
“mating ears”	7, 17, 18	[AGREED]	[AGREED]	Plain meaning.
“annular groove”	7, 8, 17, 18	[AGREED]	[AGREED]	Plain meaning.
“to provide structural support”	10	[AGREED]	[AGREED]	Plain meaning.
“extending between”	4, 14, 20	[AGREED]	[AGREED]	Plain meaning.

EXHIBIT B – JOINT CLAIM CONSTRUCTION CHART

TERMS/PHRASES FOR WHICH BOTH PARTIES SEEK CONSRUCTION AND UPON WHICH THE PARTIES DISAGREE

U.S. Patent No. 8,943,620 and U.S. Patent No. 9,181,687				
<u>Claim term, phrase or clause</u>	<u>Claims</u>	<u>Danco's Proposed Construction</u>	<u>Fluidmaster's Proposed Construction</u>	<u>Court's Construction</u>
“detachably attached”	<u>‘620 Patent</u> 1	“removably retained”	“designed for direct separation and direct reattachment without degradation (referring to gasket)”	
	<u>‘687 Patent</u> 4, 14			
“flush valve”	<u>‘620 Patent</u> 1, 21	“a valve located at the bottom of a toilet tank used to discharge water from the toilet tank to a toilet bowl”	“valve which uses a sealing member to ensure water does not leak into the toilet bowl until a flush is initiated”	
	<u>‘687 Patent</u> 4, 14			
“dual flush canister”	<u>‘620 Patent</u> 1, 11, 14	“cylindrical-shaped device providing for two flush volumes”	“a dual flush mechanism having at least a partially cylindrical shape”	
	<u>‘687 Patent</u> 4, 7, 9, 14, 17, 19, 20			

EXHIBIT C – JOINT CLAIM CONSTRUCTION CHART

TERMS/PHRASES FOR WHICH FLUIDMASTER SEEKS CONSRUCTION AND UPON WHICH THE PARTIES DISAGREE

U.S. Patent No. 8,943,620				
<u>Claim term, phrase or clause</u>	Claims	Danco's Proposed Construction	Fluidmaster's Proposed Construction	<u>Court's Construction</u>
“gasket”	1, 21	Needs no construction; plain meaning. Or, if construed: “a rubber ring, for placing around a joint to make it watertight.”	“a non-adhesive object that creates a fluid seal which is maintained by compressive resilience”	
“adaptor”	4, 11, 12, 21	Needs no construction; plain and ordinary meaning. Or, if construed: “a connector for joining parts.”	“any of various devices used in adjusting or fitting to each other the separate parts of a machine or apparatus whose design is such that adjustment or fitting would otherwise not be possible (as two pipes of different diameters)”	
“rotatably coupled”	12	Needs no construction; plain meaning. Or, if construed: “joined to allow rotation”	“coupled through rotation”	
“actuator”	22	Needs no construction; plain meaning. Or, if construed: “mechanism to start a process”	Indefinite. Or, if determined not to be indefinite, “part or assembly which causes movement”	

U.S. Patent No. 9,181,687				
<u>Claim term, phrase or clause</u>	Claims	Danco's Proposed Construction	Fluidmaster's Proposed Construction	<u>Court's Construction</u>
“adapter”	14	Needs no construction; plain meaning. Or, if construed: “a connector for joining parts.”	“any of various devices used in adjusting or fitting to each other the separate parts of a machine or apparatus whose design is such that adjustment or fitting would otherwise not be possible (as two pipes of different diameters)”	
“flush opening”	4, 14, 20	Not a “means-plus-function” claim. Needs no construction; plain meaning.	Governed by 35 U.S.C. § 112, ¶ 6. “upper flange and ear structure of adapter fittings 603, 604 via gasket 606”	
“basket structure”	4, 9, 13, 14, 19, 20	Needs no construction; plain meaning. Or, if construed: “basket-shaped structure”	“a spacer having two parallel rings vertically separated by connecting members, the lower ring having a horizontal orientation (<i>e.g.</i> , a floor)”	
“first end”	4, 7, 14, 17, 20	Not a “means-plus-function” claim. Needs no construction; plain meaning.	Governed by 35 U.S.C. § 112, ¶ 6. “top ring of adapter 133 having internal slots 233 and internal annular groove 236”	
“second end”	4, 13, 14, 20	Needs no construction; plain meaning. Or, if construed: “the latter of two extremities.”	“the lower ring having a horizontal orientation (<i>e.g.</i> , floor) of the basket structure”	

“the first end being configured to couple to a dual flush canister”	4, 14, 20	Not a “means-plus-function” claim. Needs no construction; plain meaning.	Governed by 35 U.S.C. § 112, ¶ 6. “top ring of adapter 133 having internal slots 233 and internal annular groove 236”	
“tabs”	4, 13, 14	Not a “means-plus-function” claim. Needs no construction; plain meaning.	Governed by 35 U.S.C. § 112, ¶ 6. “tabs of the clamping arms 913/933”	
“tabs extending inward”	4, 14	Not a “means-plus-function” claim. Needs no construction; plain meaning.	Governed by 35 U.S.C. § 112, ¶ 6. “tabs of the clamping arms 913/933”	
“the plurality of tabs being configured to engage a lip of a flush opening of a flush valve previously installed in the toilet”	4	Not a “means-plus-function” claim. Needs no construction; plain meaning.	Governed by 35 U.S.C. § 112, ¶ 6. “tabs of the clamping arms 913/933”	
“adapter flush opening of a flush valve adapter”	14	Not a “means-plus-function” claim. Needs no construction; plain meaning.	Governed by 35 U.S.C. § 112, ¶ 6. “upper flange and ear structure of adapter fittings 603, 604 via gasket”	
“circular support structure”	20, 21	Not a “means-plus-function” claim.	Governed by 35 U.S.C. § 112, ¶ 6.	

		Needs no construction; plain meaning.	“clamp 136, or sleeve adaptor 180”	
“a circular support structure configured to align the dual flush canister”	20	Not a “means-plus-function” claim. Needs no construction; plain meaning.	Governed by 35 U.S.C. § 112, ¶ 6. “clamp 136, or sleeve adaptor 180”	

EXHIBIT D – JOINT CLAIM CONSTRUCTION CHART

COMPLETE LANGUAGE OF DISPUTED CLAIMS

U.S. Patent No. 8,943,620	
Claim	Complete Language of Disputed Claims With Disputed Terms in Bold
1	An apparatus, comprising: a flush mechanism configured to provide for a predefined flush capability in a toilet; and a <i>gasket detachably attached</i> to the flush mechanism, the gasket forming a seal between the flush mechanism and a flush orifice of a flush valve, the seal being maintained during a full flush of the toilet by the flush mechanism, where the <i>flush valve</i> is configured to seat a sealing member.
4	The apparatus of claim 2, wherein the dual flush mechanism further comprises an <i>adaptor</i> configured to <i>detachably attach</i> to the dual flush mechanism, where the <i>gasket</i> is attached to the <i>adaptor</i> .
11	The apparatus of claim 4, wherein the dual flush mechanism further comprises a <i>dual flush canister</i> coupled to the <i>adaptor</i> .
12	The apparatus of claim 11, wherein the <i>dual flush canister</i> is <i>rotatably coupled</i> to the <i>adaptor</i> .
14	The apparatus of claim 13, wherein the <i>gasket</i> includes a pseudo I-beam structure extending around at least a portion of an edge of the second opening.
21	A method, comprising the steps of: removing a sealing member from a <i>flush valve</i> in a toilet, the <i>flush valve</i> including a flush orifice that is sealed by the sealing member; positioning an <i>adaptor</i> having a <i>gasket</i> over the flush orifice of the <i>flush valve</i> so that the <i>gasket</i> comes into contact with the flush orifice, thereby creating a seal between the <i>adaptor</i> and the flush orifice; and attaching a <i>dual flush canister</i> to the <i>adaptor</i> with the <i>gasket</i> in contact with the flush orifice, the <i>dual flush canister</i> providing for a dual flush capability.
22	The method of claim 21, further comprising the step of installing an <i>actuator</i> that triggers an operation of the <i>dual flush canister</i> .

U.S. Patent No. 9,181,687	
Claim	Complete Language of Disputed Claims With Disputed Terms in Bold
4	<p>An apparatus, comprising:</p> <p>a basket structure having a first end and a second end, the first end being configured to couple to a dual flush canister for a toilet, the dual flush canister being configured to provide both a short flush and a long flush of the toilet;</p> <p>a plurality of tabs extending inward toward a center axis of the basket structure, the plurality of tabs being configured to engage a lip of a flush opening of a flush valve previously installed in the toilet; and</p> <p>a plurality of support legs extending between the first end and the second end defining a plurality of passageways from an exterior of the basket structure to the flush opening.</p>
7	The apparatus of claim 4, wherein the first end is coupled to the dual flush canister via a plurality of mating ears fitting within an annular groove.
9	The apparatus of claim 4, wherein the dual flush canister can be rotated with respect to the basket structure .
13	The apparatus of claim 4, wherein the plurality of tabs are positioned at the second end of the basket structure .
14	<p>An apparatus, comprising:</p> <p>a dual flush canister configured to provide both a short flush and a long flush of a toilet;</p> <p>a basket structure having a first end and a second end, the first end being configured to couple to the dual flush canister;</p> <p>a plurality of tabs extending inward toward a center axis of the basket structure, the plurality of tabs engaging a lip of an adapter flush opening of a flush valve adapter;</p> <p>a plurality of support legs extending between the first end and the second end defining a plurality of passageways from an exterior of the basket structure to the adapter flush opening; and</p> <p>the flush valve adapter further comprising:</p> <p>a flange configured to mate to a flush valve opening of a previously installed flush valve in the toilet, the flange being offset at an angle with respect to the adapter flush opening; and</p> <p>a sealing material forming a seal between the flange and the flush valve opening.</p>
17	The apparatus of claim 14, wherein the first end is coupled to the dual flush canister via a plurality of mating ears fitting within an annular groove.
19	The apparatus of claim 14, wherein the dual flush canister can be rotated with respect to the basket structure .
20	<p>An apparatus, comprising:</p> <p>a dual flush canister configured to provide both a short flush and a long flush of a toilet;</p> <p>a basket structure having a first end and a second end, the first end being configured to couple to the dual flush canister;</p> <p>a plurality of support legs extending between the first end and the second end defining a plurality of passageways from an exterior of the basket structure to a flush opening; and</p>

	<i>a circular support structure configured to align the dual flush canister with the flush opening</i> , the <i>circular support structure</i> having an inner diameter greater than an outer diameter of a toilet overflow tube.
21	The apparatus of claim 20, wherein the <i>circular support structure</i> is mounted on the toilet overflow tube.

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2017, I caused a true and correct copy of the foregoing [PLAINTIFF'S PROPOSED] CLAIM CONSTRUCTION CHART to be served this day in electronic form on all counsel of record via filing same with the Court via CM/ECF.

Respectfully submitted,

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